

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VICTOR SIV	:	CIVIL ACTION
	:	
v.	:	
	:	
MICHAEL J. ASTRUE	:	NO. 06-cv-4330-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

May 29, 2007

Plaintiff brought this action seeking review of the Commissioner's decision denying his application for disability insurance benefits. I granted summary judgment in favor of plaintiff and remanded the case to the Commissioner for further evaluation. Plaintiff then moved for an award of attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), seeking \$3,841.24 for 23.3 hours of work at \$164.86 an hour. The Commissioner filed a motion to alter and amend judgment under Fed. R. Civ. Proc. 59(e) and also a motion to stay plaintiff's application for attorney's fees. Both motions were denied. The Commissioner then filed an opposition to plaintiff's request for fees.

As a preliminary matter, I note that despite the Commissioner's continuing contention to the contrary, plaintiff's motion is timely. The EAJA provision, requiring the prevailing party to submit the fee request "within thirty days of final judgment in the action," sets a deadline for filing the fee motion. It does not require the plaintiff to refrain from filing

the motion until the judgment become final and non-appealable.

The Commissioner contends that attorney's fees cannot be awarded in this case because the ALJ's decision was substantially justified, pointing to evidence in the record that could support the ALJ's finding that plaintiff is not disabled. However, the record shows that the ALJ ignored opinions from plaintiff's treating physicians and other experts, without explanation. A decision that ignores relevant evidence and fails to explain the omission has no reasonable basis in fact and is not substantially justified.

An order follows.

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ORDER

AND NOW, this 29th day of May, 2007, IT IS ORDERED:

1. Plaintiff's motion for attorney's fees is GRANTED.
2. Defendant shall pay plaintiff \$3,841.24 in Equal Access to Justice Act fees.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.